

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-214161

DATE: November 2, 1984

MATTER OF: The City of Spartanburg

DIGEST:

Where protester disagrees with procuring activity as to the applicable tariff rates used to calculate life-cycle cost of proposals, but protester has furnished no direct, independent evidence that the cost calculation or tariff information is incorrect, and the procuring activity has provided basis for its calculation, the protester has failed to meet its burden of affirmatively proving its case.

The City of Spartanburg, South Carolina (Spartanburg), protests the award of a contract for space for an automated flight service station facility (AFSS) to Anderson County, South Carolina (Anderson), under solicitation No. SO-13045, issued by the Federal Aviation Administration (FAA), Department of Transportation. Spartanburg questions whether the telecommunication services cost calculations which resulted in Anderson's being determined the low cost offeror were properly computed.

We deny the protest.

The solicitation in question was originally issued on June 1, 1982, requesting offers for the lease of approximately 8,000 square feet of floor space to FAA, on an airport within the state of South Carolina, flight plan area. The lease was to be for a 1-year period commencing June 1, 1985, with 1-year renewal options for up to 20 additional years.

The procurement was conducted under the procedures outlined in Office of Management and Budget (OMB) circular No. A-104. The solicitation provided, in essence, that award was to be made to the technically acceptable offeror with the lowest total life-cycle cost to the government for a 20-year period. This total life-cycle cost analysis was conducted by FAA pursuant to the guidelines contained in OMB circular A-104. The analysis included consideration of all costs to the government associated with the

030487

operation of the AFSS, such as leasing expense, government employee relocation expenses, telecommunication costs, and utility/service costs.

Four technically acceptable proposals were received by FAA, including the Anderson and Spartanburg proposals. In addition, the FAA evaluated the life-cycle costs for the construction of a federally owned facility at Greenville, South Carolina. In conducting its evaluation, FAA utilized a three-level review process, the first level of review being that of the appropriate (Southern) regional office, followed by FAA headquarters review and, finally, review and approval by the FAA Administrator. In this instance, the regional review determined that Spartanburg's life-cycle cost of \$4,287,374 was low. Anderson's life-cycle cost, despite the fact that its offer included only nominal leasing costs of \$1 per year, was determined to be \$4,498,580. Based on this evaluation, in April of 1983, the FAA Southern Region recommended selection of Spartanburg for award of the AFSS contract.

Subsequent to this determination, on June 21, 1983, GAO, in conjunction with an ongoing audit of FAA's overall AFSS acquisitions, sent a letter to FAA which recommended various changes in FAA's overall determination of life-cycle cost analysis. In pertinent part, the letter pointed out that life-cycle cost calculations by the different FAA regions varied considerably and, in particular, that telecommunication service costs were calculated inconsistently, with some regions failing to take into consideration actual cost data available with respect to local phone line costs, assuming instead the use of "WATS" telephone lines, which tends to equalize telecommunication costs at different locations. GAO also pointed out that evaluation results were sensitive to changes in telecommunication cost factors. In this particular procurement, telecommunication cost constitutes more than half of the total life-cycle cost.

In response to this letter, FAA reviewed its evaluation methodology in general and modified its manner of ascertaining various site specific costs, including telecommunication costs, in an effort to effect an evaluation methodology which more accurately reflected the precise costs for each site being evaluated. In this instance, offerors were advised by letter of September 2, 1983, with respect to changes being made in the life-cycle cost calculations based on staffing assumptions. In

addition, this letter pointed out to offerors that costs related to leased communications (that is, telecommunication costs) were a major factor in determining life-cycle cost and represented the highest single cost item in the analysis. FAA's letter further pointed out that the most significant portion of these costs is calculated based on the distance from the offeror's site to various air navigational facilities located within the flight plan area. Offerors were advised that since this information could affect their competitive position, they could change or withdraw their offers prior to October 5, 1983.

As a result of reevaluation using intrastate tariff rates in conjunction with distances from offeror sites to various air navigational facilities within the flight plan area, Anderson's life-cycle cost was determined to be \$4,722,332, and Spartanburg's life-cycle cost was determined to be \$4,847,564. Based on these calculations, on November 16, 1983, the FAA Southern Region recommended award to Anderson on the basis of lowest life-cycle cost. This recommendation was reviewed and confirmed by FAA headquarters and the FAA Administrator, and on January 10, 1984, award to Anderson was announced.

Spartanburg protested this award, raising a number of general allegations with respect to the conduct of the procurement. These included objections that GAO's recommendations to FAA did not establish fixed evaluation criteria, or verify bid information prior to award, that FAA changed evaluation factors and methodology after submission of offers, that FAA did not verify bid information prior to award, that FAA treated offerors unequally by disseminating information differentially and unequally with respect to evaluation factors, and that FAA made erroneous calculations of costs in general and of telecommunication costs in particular.

In its report, FAA addressed each of the issues raised, either directly contradicting Spartanburg's factual assertions or pointing out that Spartanburg was making incorrect assumptions with respect to the obligations and requirements of FAA vis-a-vis those of GAO with respect to this procurement. In its comments, Spartanburg did not provide any substantiation for its allegations, nor did it dispute any of the dispositive factual information or explanations provided by FAA. Accordingly, the only allegation at issue concerns the validity of the telecommunication cost calculations made by FAA.

Rather, Spartanburg questioned the accuracy of the telecommunication cost evaluation conducted by FAA, requesting rate information and an explanation regarding the specifics of the cost calculations used by FAA to evaluate intrastate tariff-based telecommunication costs. In response to these comments, FAA provided Spartanburg and our Office with copies of the rate information actually used, accompanied by the cost calculation methodology, and the actual calculations. Thereupon, Spartanburg contended that the tariffs used were out of date and requested that FAA further clarify the calculations and recompute telecommunication cost on the basis of current tariffs. FAA responded that the tariff information was uniformly and properly applied to the offerors on the basis of then-current, available tariff information at the time of evaluation and arguing that it was entitled to rely on those calculations and that recalculation after the award was inappropriate.

With respect to our review standard, we point out that it is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability or relative merit. The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment and discretion. Our review is limited to examining whether the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. Our review of an agency's evaluation of the cost realism of proposals is based on a similar standard, and the protester must make a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. Robert E. Derektor of Rhode Island, Inc., et al., B-211922; B-211922.2, Feb. 2, 1984, 84-1 C.P.D. ¶ 140; Moshman Associates, Inc., B-192008, Jan. 16, 1979, 79-1 C.P.D. ¶ 23.

Cost realism analysis is usually done in the context of cost-reimbursement contracts since, regardless of the offeror's proposed costs, the government reimburses the contractor for the allowable costs. In this instance, the telecommunication costs are similar in that the government is responsible for their payment, the difference being that the offerors do not provide cost estimates; rather, it is done by the contracting activity as part of its life-cycle cost analysis. Accordingly, we believe that a similar standard of review applies. With regard to a specific cost realism analysis, we have held that determinations of the procuring activity will not be disturbed by our Office

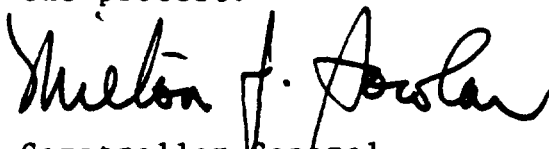
unless they clearly lack a reasonable basis. Ionics Incorporated, B-211180, Mar. 13, 1984, 84-1 C.P.D. ¶ 290.

The FAA has provided information which indicates the intrastate tariffs used as the basis for its telecommunication rates, and the cost calculations which establish the basis for FAA's life-cycle cost determinations. With respect to the currency and applicability of the tariffs used to make the calculations, FAA properly relied on available, then-current tariffs. Our Office has held that a contracting officer may properly rely on and use for cost calculation purposes rates which were applicable at the time of evaluation, even if they subsequently become unavailable or change. York Industries, Inc., B-210756.2, Apr. 24, 1984, 84-1 C.P.D. ¶ 463.

Moreover, where a protester questions the correctness of a rate or tariff applied by a contracting officer, the protester has the burden of affirmatively proving that an improper tariff or rate was applied, since, as a general matter, the protester has the burden of affirmatively proving its case, which is not met where the only evidence presented is the protester's statements conflicting with the findings of the contracting officer. Line Fast Corporation, B-205483, Apr. 26, 1982, 82-1 C.P.D. ¶ 382.

In this instance, the substance of Spartanburg's protest is its allegation that FAA improperly calculated the telecommunication cost, using outdated tariffs. FAA has provided an explanation of its calculation methodology and has indicated that it was done on the basis of the best available, then-current tariff information. Spartanburg has not provided any specific refutation or information which evidences any inaccuracy in either the calculation methodology or the tariff rates underlying the calculations. Rather, Spartanburg has simply asserted that inadequate explanations have been provided by FAA, and that it believes improper tariffs were applied. This allegation, by itself, is insufficient to meet the protester's burden of proving that the FAA calculations were clearly lacking a reasonable basis. Line Fast Corporation, B-205483, supra.

Accordingly, we deny the protest.

for 
Comptroller General
of the United States